84-59

No.

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CLERK

In the Supreme Court of the United States

October Term, 1984

THE CLEVELAND-CLIFFS STEAMSHIP COMPANY, *et al.*,
Petitioners,

vs.

HONORABLE ALVIN I. KRENZLER, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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38pp

QUESTION PRESENTED

Whether the District Court abused its discretion in granting a motion to transfer venue in this action in admiralty *in personam*, arising out of the stranding of the vessel, to the District of Minnesota, pursuant to 28 U.S.C.A. §1404(a), because the wreck of the abandoned vessel was located there, when the balance of convenience of all parties and witnesses strongly supported retention in the Northern District of Ohio.

LIST OF PARTIES

The Cleveland-Cliffs Steamship Company,
as owner of the Steamer Frontenac

The Cleveland-Cliffs Iron Company,
as demise or bareboat charterer of
the Steamer Frontenac

Great Lakes Protective Association

New York Marine Managers, Inc.

American Marine Underwriters, Inc.

Reed & Brown, Inc., Managers,
Highlands Insurance Company

Allianz Insurance Company

Texas Marine Underwriters Agency, Inc.

Taisho Marine & Fire Insurance Co.

Underwriters at Lloyd's & Institute Companies

Reserve Mining Company (In original action)

RULE 28.1 STATEMENT

List of subsidiaries and affiliated corporations, partnerships and other enterprises of The Cleveland-Cliffs Iron Company. The remaining Petitioners do not have subsubsidiaries.

Adams Mine, The
Albanel Minerals Limited
Apieco Assurance Ltd.
Atlantic Iron Ores Limited
Cleveland-Cliffs Foundation, The
Cleveland-Cliffs Ore Corporation
Cleveland-Cliffs Steamship Company, The
Cliffs Biwabik Ore Corporation
Cliffs of Canada Limited
Cliffs Copper Corp.
Cliffs Development Company
Cliffs Drilling Company
Cliffs Electric Service Company
Cliffs Empire, Inc.
Cliffs Engineering, Inc.
Cliffs Forest Products Company
Cliffs Fuel Service Company
Cliffs-Getty (Joint Venture)
Cliffs IH Empire, Inc.
Cliffs Incorporated
Cliffs International, Inc.
Cliffs International Investments, Inc.
Cliffs Marquette, Inc.
Cliffs Metals, Inc.
Cliffs Minerals, Inc.
Cliffs Offshore, Inc.
Cliffs Oil Shale Corp.
Cliffs Robe River Iron Associates (Joint Venture)

Cliffs Synfuel Corp.
Cliffs Tilden, Inc.
Cliffs TIOP, Inc. (formerly Cliffs MC Empire, Inc.)
Cliffs Western Australian Mining Co. Pty. Ltd.
Cliffs Western Development, Inc.
Edison-Cliffs-Getty Joint Venture
Empire Iron Mining Partnership
Escanaba Properties Company
Escanaba Properties Partnership
Humboldt Mining Company
International Iron Ores Limited
Ishpeming Mining Company
J&L-Cliffs Ore Partnership
Jay and Sea Corporation
Lake Superior & Ishpeming Railroad Company
Marquette Iron Mining Partnership
Marquette Range Coal Service Company
Mesaba-Cliffs Mining Company, The
Minex Joint Venture
Negaunee Mine Partnership
Pellets, Inc.
Pintec Joint Venture
Pioneer Pellet Plant (Joint Venture)
Roberts Mining Company (Joint Venture)
Sherman Mine (Joint Venture)
Tetapaga Mining Company Limited
Thunderbird (Joint Venture)
Tilden Iron Ore Company
Tilden Iron Ore Partnership
Tilden Mining Company (Joint Venture)
TIOP Financing Corporation
Upper Peninsula Generating Company

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No.

In the Supreme Court of the United States

October Term, 1984

THE CLEVELAND-CLIFFS STEAMSHIP COMPANY, *et al.*,
Petitioners,

vs.

HONORABLE ALVIN I. KRENZLER, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioners, The Cleveland-Cliffs Steamship Company, et al., respectfully pray that a writ of certiorari issue to review the Order of the United States Court of Appeals for the Sixth Circuit denying the Petition for Writ of Mandamus of such Petitioners in that Court.

OPINIONS BELOW

The Orders of the District Court entered on October 28, 1982 (Appendix B) and January 11, 1983 (Appendix C) have not been published. The Order of the Court of Appeals decided and filed April 16, 1984 (Appendix A) has not been reported.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was decided and entered on April 16, 1984. The jurisdiction of this Court is invoked under Title 28 U.S.C.A. §1254(1).

STATUTE INVOLVED

The statute involved is 28 U.S.C.A. §1404(a) which states:

§ 1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

STATEMENT OF THE CASE

Petitioners The Cleveland-Cliffs Steamship Company and The Cleveland-Cliffs Iron Company are corporations which owned and operated the Steamer Frontenac, a merchant vessel of the United States, in commerce and navigation on the Great Lakes, and the remaining Petitioners are marine insurers which insured the vessel against total loss.

Respondent is a United States District Judge for the Northern District of Ohio, Eastern Division.

This case involves a petition for a writ of mandamus filed by Petitioners in the Court of Appeals against the District Judge, directing Respondent to request the return

of the pleading files from the U.S. District Court for the District of Minnesota, Fifth Division, where they had been transferred pursuant to a motion granted by the District Court under Title 28 U.S.C.A. §1404(a), and ordering that venue of the action be retained in the Northern District of Ohio.

The original action, The Cleveland-Cliffs Steamship Company, as Owner of the Steamer Frontenac, et al., v. Reserve Mining Company, Case No. C82-1712, was filed by Petitioners against defendant Reserve Mining Company ("Reserve") in the U.S. District Court for the Northern District of Ohio, Eastern Division, as a result of the stranding of the Str. Frontenac on the evening of November 22, 1979, while approaching to enter the harbor owned and operated by Reserve at Silver Bay, Minnesota, for the purpose of loading a cargo of taconite pellets for transportation to Cleveland, Ohio. The navigation light on Pellet Island at the mouth of the harbor, maintained as a private aid to navigation by Reserve, was not lighted, which was held to be a contributing cause of the casualty by the United States Coast Guard that resulted in the constructive total loss of the Frotenac. Petitioners seek recovery of the resulting damages because of the negligence of Reserve in failing to maintain the navigation light in proper operating condition.

The transfer motion of Reserve conceded jurisdiction in the Northern District of Ohio of the original action but urged the court to transfer venue to the District of Minnesota because Reserve is incorporated in Minnesota and its principal business, the place where the stranding occurred, an unspecificed number of its witnesses, and the wreck of the vessel were located there.

Petitioners opposed the motion to transfer on the ground that the balance of convenience of the parties and

the witnesses was in Cleveland, Ohio, where the action had been filed. The principal offices of The Cleveland-Cliffs Steamship Company, as owner, and The Cleveland-Cliffs Iron Company, as charterer, and Great Lakes Protective Association, the major insurer of the vessel, were located in Cleveland. The material witnesses relied upon by Petitioners either resided in the Northern District of Ohio or were located much closer to Cleveland, Ohio, than Duluth, Minnesota, where transfer was sought. A few witnesses resided in locations where either forum would be equidistant. The supporting affidavits of the parties established that substantial inconvenience and additional expense would be inflicted upon Petitioners if the transfer of venue was granted, to a degree which surpassed the inconvenience to Reserve in defending the action at Cleveland, Ohio.

The District Court nevertheless granted Reserve's motion for a transfer of venue to Duluth, Minnesota, only because the wreck of the vessel was located there and for no other reason, stating:

> "The subject matter of the present action involves the stranding of and subsequent damage to a vessel known as the Str. Frontenac as it approached a harbor owned and operated by the defendant in Silver Bay, Minnesota. The ship itself now lies in the Frazer Shipyard in Superior, Wisconsin, approximately two miles from the federal courthouse in Duluth, Minnesota. Therefore, it is the opinion of this court that trial of this matter would be more convenient in the federal court in Duluth, Minnesota. Accordingly, this action is hereby transferred to the United States District Court for the District of Minnesota, Fifth Division, Duluth, Minnesota."

In denying Petitioners' motion for writ of mandamus, the Sixth Circuit Court of Appeals entered a per curiam order affirming the District Court, thereby adopting a rule that the forum should be determined in admiralty cases in *personam* by the location of the vessel rather than the convenience of the parties and the witnesses (Appendix A), and thus ignored the established principles governing the determination of a motion to transfer under 28 U.S.C.A. §1404(a) that the plaintiff's right to select the forum and the balance of convenience of the parties and the witnesses are primary factors to be considered.

> "[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

There is no other case which supports the decisions of the courts below in ruling that the location of a vessel is the sole criterion for determining the proper forum in an admiralty case *in personam* and is of overriding importance in the determination of a motion to transfer venue under 28 U.S.C.A. §1404(a), thus obviating any necessity for considering the convenience of the parties and witnesses and the right of plaintiff to select the forum. It is particularly incorrect in this case to place such great weight upon the location of the Frontenac, because it was sold after the stranding for scrap after it was found to be a constructive total loss, its hulk has been stripped, and it has been or will be completely scrapped. Surveyors have long since completed their examinations of the vessel on drydock and there is no dispute on the extent of the damage. The navigational gear was all removed, as well as other equipment that could be salvaged. There is no perceptible evidentiary value to be gained in looking at the vessel or the location where the stranding occurred. Photographs,

navigational charts, log books, and the testimony of witnesses form the essential proof, as in every other stranding and grounding case, and the builder's plans, classification surveys and Coast Guard inspections will be the essential proof with respect to the condition of the vessel for determination of its value immediately prior to the casualty in respect to recoverable damages.

REASONS FOR GRANTING THE WRIT

I.

By affirming the transfer of this action based solely upon the location of the wreck of the damaged vessel and without regard to the convenience of the parties and witnesses and plaintiff's right to select the forum, the Sixth Circuit has adopted a rule of law in admiralty cases which is not in accord with the governing statute, 28 U.S.C.A. §1404(a), and the principles which control its application. This new rule in the Sixth Circuit is also impractical. Vessels by their very nature as a means of transportation are operated on voyages. Filing an action where the ship is located is only a necessity in maritime actions *in rem* and not *in personam,* where the plaintiffs have always been accorded the same right in the selection of a forum as other plaintiffs.

The Sixth Circuit rejected Petitioners' contention that there was an abuse of discretion by the District Court in transferring venue to the District of Minnesota merely because the abandoned wreck of the vessel was located there, without regard to the balance of convenience of the parties and witnesses as required under 28 U.S.C.A. §1404(a), in a per curiam decision simply citing two cases in which there was no similarity upon facts and in which

the decisions were based upon the balance of convenience of the witnesses (Appendix A). These were not admiralty or maritime cases, and ships were not involved. The facts and principles enunciated in the cited cases are inapplicable to the issues presented here.

The Sixth Circuit did not review the facts upon which the District Court ordered a transfer of venue, and its terse Per Curiam Order (Appendix A) of affirmance cited only two cases, which have no relevance to the propriety of transferring an admiralty case *in personam*, civil and maritime, for vessel damages sustained in a grounding, to another district only because the dismantled wreck and the place of the accident are located there without regard to the balancing of conveniences of parties and witnesses. On the contrary, the principles in those cases support Petitioners' right to file and have this case tried in the Ohio forum they selected. In *Lemon v. Druffel*, 253 F.2d 680, 685 (6th Cir.), *cert. denied*, 358 U.S. 821 (1958), transfer of venue from an Ohio district to a Kentucky district was upheld for the convenience of witnesses, because most of them either lived in Kentucky or resided close to the Kentucky court, thus, "requiring a balancing of conveniences by the District Judge."

The other case cited by the Sixth Circuit, *Panhandle Eastern Pipe Line Co. v. Thornton*, 267 F.2d 459 (6th Cir.), *cert. denied*, 361 U.S. 820 (1959), involved a motion for transfer based upon the alleged inability of defendant to obtain a fair trial in Detroit, Michigan, due to numerous controversies before federal and state courts and tribunals there which resulted in unfavorable publicity and such bias, prejudice, and hostility in the majority of the people that an impartial jury could not be obtained. The transfer was denied and the District Court was affirmed, noting on page 460 that the convenience of parties and witnesses had

been considered by the District Judge and was discussed in his Order denying the motion.

The Order of the District Court (Appendix B) reviewed the provisions of 28 U.S.C.A. §1404(a) and the principles laid down in *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501 (1947), and then granted transfer of venue *only because the ship is located in Superior, Wisconsin, near the Federal Courthouse at Duluth, Minnesota,* and also stated the stranding occurred at Silver Bay, Minnesota. The statutory requirements for transfer were not considered; the Order does not and could not contain any determination that the balance of convenience of the parties and witnesses outweighs plaintiffs' right to select the forum and thus justify transfer, because nine of eleven plaintiffs' prospective witnesses reside in the Northern District of Ohio and the other two are closer to Cleveland where the plaintiff shipowner, plaintiff vessel operator, and primary underwriter plaintiff are located with their pertinent records of the casualty, whereas defendant Reserve identified a total of four witnesses, two of whom are in its employ and none of whom appear from the record to be unwilling to travel to Cleveland to testify.

A view of the location where the grounding occurred would yield no useful information to the trier of the facts. The shoals are beneath the surface of the water and their location must be determined from navigation charts. Photographs of Pellet Island Light will adequately depict its physical characteristics.

The stripped wreck of the Frontenac lies at a shipbreaker's dock in Superior, Wisconsin, and the damage to the bottom of the vessel is beneath the surface of the water and therefore not visible. A visit to the vessel would provide no relevant evidence. The reports of surveyors on the extent of the damage and the photographs taken while

the ship was drydocked to inspect the damage will have to be relied upon in either forum.

There are no *in personam* admiralty cases, to our knowledge, in which motions for transfer of venue have been granted solely because the vessel is located in the transferee district absent special circumstances, and this basis for transfer has been rejected by lower courts.

In *Clendenin v. United Fruit Co.*, 214 F. Supp. 137 (E.D. Pa., 1963), the plaintiff seaman commenced an action for personal injuries sustained aboard a vessel while at sea. The defendant shipowner's motion to transfer the case to Louisiana for various reasons, including the fact that the ship traded to New Orleans, was denied. The Court stated at page 139:

> "Certain principles are now entitled to hornbook characterization: *The plaintiff's choice of forum is entitled to great weight and defendant has a heavy burden of showing a strong balance of inconvenience.* With these guideposts in mind, I proceed to examine *seriatim* the reasons advanced by defendant for transfer.
>
> * * * * *
>
> "4. The vessel (S.S. Yaque) sails almost continuously in and out of New Orleans. I cannot believe that the absence of the ship from the forum means anything. *Pictures, which defendant can certainly obtain, will supply any visualization thought to be necessary.* (I have never heard of a case being continued because the ship was at sea.)" (Emphasis added.)

See also, *Borden v. Owens-Illinois Glass Co.*, 1967 A.M.C. 75, at 76 (S.D. N.Y., 1966).

The location of a marine casualty as justifying transfer of venue has also been rejected.

National Sugar Refining Company v. M/S Francisville, 1960 A.M.C. 2146 (S.D. N.Y., 1960), was an action arising from the striking of a pier in Philadelphia, in which the defendant shipowner impleaded a tug company. The tug company's motion to transfer the action to the Eastern District of Pennsylvania was denied, since a view of the scene of the casualty was not a material consideration. The Court concluded, at page 2147:

> "The contention that it may become necessary to view the scene of the collision, coming after repairs have been made and when no reason is suggested why photographs will not adequately depict the locale, 'is sheer speculation and counts for nothing on this motion.' *Markantonatos v. Maryland Drydock Co.* (S.D. N.Y.), 110 F.Supp. 862; *Skultety v. Pennsylvania R. Co.* (S.D.N.Y.), 91 F.Supp. 118."

In *Kinsman Transit Co. v. Dunham Towing & Wrecking Co.,* 122 F. Supp. 911 (N.D. Ohio, 1953), the court held that libelant's choice of a forum is an admiralty action *in personam* is a substantial right and should not be disturbed unless balance of convenience lies strongly in favor of respondent irrespective of the location where the accident occurred.

Petitioners contend that the principles which govern transfer of venue in admiralty and maritime actions *in personam* are identical to those in other civil litigation and should be given effect in this case. The essential facts regarding the navigation of the vessel prior to and at the time of the casualty will have to be established by the testimony of the officers and crew members of the vessel who were on duty, and the overwhelming majority of them either reside in the Northern District of Ohio or are closer to that District, where the trial would be held

in Cleveland, Ohio, than they are to the Minnesota District Court sitting in Duluth, Minnesota. The affidavits which were filed clearly confirmed the balance of convenience of all witnesses to be in the forum selected for the filing of the action, thus militating against transfer. Of the crew members on duty when the casualty occurred, the third mate, third assistant engineer, and three unlicensed crew members reside within the Northern District of Ohio. The master resides in New Hampshire, much closer to Cleveland than to Duluth. The first mate lives in Pennsylvania, much closer to Cleveland than to Duluth. To be required to take these witnesses to Duluth to testify would obviously be inconvenient and create hardship and additional expense to Petitioners.

The principal offices of the owner and operator of the vessel are located in Cleveland, Ohio, and potential witnesses among its office staff, including the operations manager of the Marine Division and the fleet engineer, are located there.

The principal surveyor of the U.S. Salvage Association, Inc., attended the vessel on strand as wreck master until it was refloated and taken to a shipyard, where he made a survey on drydock. His office is located in Cleveland, Ohio, and he resided within the Northern District of Ohio at the time the action was filed. He will be a witness with respect to damage and salvage questions.

The principal surveyor and president of North American Marine, Inc., at the time of the casualty resided in Bay Village, Ohio, within the Northern District, and he is a witness on the value of the vessel immediately prior to the constructive total loss.

The convenience of the parties is also to be considered in ruling upon a motion to transfer venue. The marine

insurers are represented by Johnson & Higgins of Ohio, Inc., of Cleveland, Ohio, and Great Lakes Protective Association, one of the principal insurers of the vessel, also maintains its office in Cleveland, Ohio. As previously pointed out, the owner and operator of the vessel have their principal offices in Cleveland, Ohio, where the action was instituted.

The affidavits submitted in support of the transfer of venue by defendant Reserve stated that there were two witnesses who observed the grounding from a distance during a snowstorm which obscured vision and rendered the proper maintenance of the navigation light on Pellet Island of even greater importance. Additional witnesses were a marine surveyor residing in Duluth who examined the vessel and would be called to testify on value, and a company official. Navigation experts residing in Ohio and Arizona were subsequently identified. It is clear that it would actually be much more inconvenient and expensive for Petitioners to try the case in Duluth than it would be for defendant Reserve to bring its witnesses to Cleveland. Thus, there is no valid basis for transfer of venue under the provisions of Title 28 U.S.C.A. §1404(a) and the cases interpreting and clarifying the elements which must be present to justify transfer.

There are no special considerations in this case which support transfer of venue. The proximity of Pellet Island and Silver Bay harbor, Minnesota, to Duluth, is not of any significance since shoals upon which the vessel stranded are beneath the surface of the water and viewing the scene would disclose nothing. The charts show the location of the shoals and the depths of the water, which are available at trial anywhere. The damage below the waterline of the abandoned wreck of the vessel is not visible except on drydock. Consequently, the balance of

convenience to witnesses and parties, together with the recognized right of the plaintiff to select a forum, are the controlling factors.

The District Court also abused its discretion after granting the motion for transfer of venue stating that trial would be more convenient in Duluth because the stranding occurred in that District and the vessel was located there, by immediately forwarding the file to the District Court in Minnesota and rejecting plaintiffs' motion for reconsideration.

II.

The clearly erroneous standard applicable to civil appeals, both from final judgments and appealable interlocutory orders, should be applied. See *Nicol v. Koscinski*, 188 F.2d 537 (6th Cir., 1951); *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947); *Koster v. Lumbermens Mut. Cas. Co.*, 330 U.S. 518 (1947); *Star Lines, Ltd. v. Puerto Rico Maritime Ship. A.*, 442 F. Supp. 1201 (S.D. N.Y., 1978).

The discretion of a District Court to grant a transfer of venue motion is limited by the enabling statute, 28 U.S.C.A. §1404(a), to a consideration of the balance of the convenience of the parties and witnesses in the interest of justice, and it is clearly erroneous to depart from the statutory standards as interpreted and adopted by this Court.

CONCLUSION

A petition for writ of certiorari should be granted to review the Order of the Sixth Circuit transferring venue under Title 28 U.S.C.A. §1404(a) in this admiralty action *in personam* where there are no special evidentiary considerations rendering the location of the vessel of any importance for the trial of the action, and to order the return of the case to the Northern District of Ohio from the Northern District of Minnesota.

Respectfully submitted,

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APPENDIX A

Order and Opinion of the United States Court of Appeals for the Sixth Circuit

(Filed April 16, 1984)

No. 83-3064

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE:

THE CLEVELAND-CLIFFS STEAMSHIP COMPANY; AS OWNER OF THE STR. FRONTENAC; THE CLEVELAND-CLIFFS IRON COMPANY, AS DEMISE OR BAREBOAT CHARTERER OF THE STR. FRONTENAC; GREAT LAKES PROTECTIVE ASSOCIATION; NEW YORK MARINE MANAGERS, INC.; AMERICAN MARINE UNDERWRITERS, INC.; REED & BROWN, INC., MANAGERS; HIGHLANDS INSURANCE COMPANY; ALLIANZ INSURANCE COMPANY; TEXAS MARINE UNDERWRITERS AGENCY, INC.; TAISHO MARINE & FIRE INSURANCE CO.; AND UNDERWRITERS AT LLOYDS & INSTITUTE COMPANIES,

Petitioners.

ORDER

BEFORE: ENGEL, KEITH, and MARTIN, *Circuit Judges*

Petitioners seek an order in the nature of mandamus directing the district court to (1) vacate its order granting a motion to transfer this case pursuant to 28 U.S.C. §1404

(a) and (2) request return of the pleading files from the Minnesota district court.

Upon consideration, the Court concludes that the district court did not abuse its discretion in granting Reserve Mining Company's motion to transfer. *Lemon v. Druffel*, 253 F.2d 680, 685 (6th Cir.), *cert. denied*, 358 U.S. 821 (1958); *Panhandle Eastern Pipe Lines Co. v. Thorton*, 267 F.2d 459, 461 (6th Cir.), *cert. denied*, 361 U.S. 820 (1959).

Accordingly, it is ORDERED that the petition for a writ of mandamus be, and is hereby, denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

APPENDIX B

Order of the United States District Court

(Filed October 28, 1982)

Case No. C82-1712

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLEVELAND-CLIFFS STEAMSHIP COMPANY, AS OWNER OF THE STEAMER FRONTENAC, *et al.*
Plaintiffs,

vs.

RESERVE MINING COMPANY,
Defendants.

ORDER

Pending before the Court is the defendant's motion for an Order transferring this action, pursuant to 28 U.S.C. § 1404(a), to the United States District Court for the District of Minnesota, Fifth Division.

28 U.S.C. § 1404(c) [sic] provides:

> (c) [sic] For the convenience of parties and witnesses, in the interests of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

The purpose of this action is to prevent waste of time, energy, and money and to protect litigants against un-

necessary inconvenience and expense. *Van Dusen v. Barrack,* 376 U.S. 612 (1964). In determining whether to transfer an action for the convenience of the parties and witnesses and in the interests of justice, the Court is vested with wide discretion. *Fanin v. Jones,* 229 F. 2d 368 (6th Cir. 1956).

The initial inquiry under the statute is whether the action could originally have been brought in the district it is to be transferred to. In an admiralty action, such as this, the venue provisions of 28 U.S.C. §§ 1391-1393 do not apply. Fed. R. Civ. P. 82. Venue in an admiralty action is proper in any district where valid service of process could have been made upon the defendant. No admiralty rule governs the place where a corporation may be served with process but admiralty practice is substantially similar to Fed. R. Civ. P. 4. *Societe Com. de Transp. Transatl. v. S.S. "African Mercury",* 366 F. Supp. 1347 (S.D.N.Y. 1973). Accordingly, as the defendant is a Minnesota corporation doing business there, and the cause of action arose in Minnesota, service could be made on the defendant in the District for Minnesota and therefore venue is proper there.

Having determined that this action could have been brought in Minnesota originally the issue becomes whether this action should be transferred there. In determining whether the doctrine of forum non conveniens should be applied, a court should consider the private interests of the litigant, relative ease of access to sources of proof, availability of compulsory process for the attendance of unwilling witnesses, the possibility of viewing the premises, the relative advantages and obstacles to a fair trial and all other practical problems that make the trial of a case easy, expeditious and inexpensive, as well as the enforce-

ability of any judgment obtained. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

The subject matter of the present action involves the stranding of and subsequent damage to a vessel known as the Str. Frontenac as it approached a harbor owned and operated by the defendant at Silver Bay, Minnesota. The ship itself now lies in the Frazer Shipyard in Superior Wisconsin approximately two miles from the Federal Courthouse in Duluth, Minnesota. Therefore, it is the opinion of this Court that trial of this matter would be more convenient in the Federal Court in Duluth, Minnesota. Accordingly, this action is hereby transferred to the United States District Court for the District of Minnesota, Fifth Division, Duluth, Minnesota.

IT IS SO ORDERED.

/s/ ALVIN I. KRENZLER
United States District Court

APPENDIX C

Order of the United States District Court

(Filed January 11, 1983)

Case No. C82-1712

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE CLEVELAND-CLIFFS STEAMSHIP COMPANY, as Owner of the Steamer Frontenac, *et al.*,
Plaintiffs,

VS.

RESERVE MINING COMPANY,
Defendant.

ORDER

(Filed January 11, 1983)

On October 28, 1982 this Court granted the defendant's previously filed motion to transfer venue in this action pursuant to 28 U.S.C. §1404(a), and entered an Order transferring this action to the United States District Court for the District of Minnesota, Fifth Division. Presently pending before the Court is the plaintiff's motion for reconsideration of this Court's October 28, 1982 order.

This Court, having transferred this action pursuant to 28 U.S.C. §1404(a), no longer has jurisdiction over the action and therefore cannot order it retransferred to this

district. *IN RE MILLER*, 485 F.2d 74 (5th Cir. 1973). See also, *THARP v. TRANSWORLD DRILLING COMPANY*, 367 F.Supp. 521 (W.D.Okla. 1973). Accordingly, plaintiff's motion is denied.

IT IS SO ORDERED.

/s/ ALVIN I. KRENZLER

United States District Court

No. 84-59

Office-Supreme Court, U.S.
FILED
AUG 13 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1984

THE CLEVELAND-CLIFFS STEAMSHIP COMPANY, et al., *Petitioners,*

vs.

HONORABLE ALVIN I. KRENZLER, United States District Judge for the Northern District of Ohio, Eastern Division, *Respondent,*

and

RESERVE MINING COMPANY,
Respondent and Defendant Below

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT RESERVE MINING COMPANY'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether petitioners have shown special and important reasons justifying review on writ of certiorari as required by Sup.Ct.R. 17.1, 21.1(j).

RULE 28.1 STATEMENT

At the time of the stranding, November 29, 1979, respondent Reserve Mining Company, a Minnesota corporation, was owned by:

Armco, Inc. - 50% of the stock

Republic Steel Corporation - 50% of the stock

Presently, Reserve Mining Company is a Minnesota partnership. The partners are:

Republic Reserve, Inc. (a wholly owned subsidiary of Republic Steel Corporation)

First Taconite Corporation (a wholly owned subsidiary of Armco, Inc.)

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No. 84-59

IN THE

Supreme Court of the United States

October Term, 1984

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STATEMENT OF THE CASE

Petitioners' Statement of the Case is generally correct as to the procedural posture of this matter. Petitioners neglect to identify defendant below, Reserve Mining Company, (hereinafter called "Reserve"), the present respondent. At

the time of the stranding, Reserve was a Minnesota corporation with its principal place of business on the north shore of Lake Superior at Silver Bay, Minnesota. There Reserve owns and operates a taconite ore pelletizing facility.

Petitioners' Statement of the Case is seriously mistaken on two points. First, petitioners assert that the original transfer motion was made because Reserve is incorporated in Minnesota and its principal place of business, the place where the stranding occurred, an unspecified number of its witnesses, and the wreck of the vessel were located there. Reserve's transfer of venue motion contained much more substance.

Reserve's motion pleadings provided the District Court with the following reasons to exercise its broad discretion to transfer venue:

a) Reserve is a Minnesota corporation;

b) Reserve's principal place of business is at Silver Bay, Minnesota;

c) The docking facility for which the vessel was headed is located at Silver Bay, Minnesota;

d) One of the petitioners, The Cleveland-Cliffs Iron Company, does business in Minnesota;

e) The stranding occurred on the Minnesota shore of Lake Superior near Reserve's harbor;

f) The wreck is located at the Fraser Shipyards, Superior, Wisconsin, about two miles from the U.S. District Courthouse in Duluth, Minnesota;

g) Many of Reserve's important witnesses are located in Minnesota, either in the Silver Bay or Duluth

areas (these specific names were submitted to the District Court):

—George F. Keller, supervisor of Reserve's Casualty Property Department; familiar with the stranding and salvage of the vessel;

—Bruce Jordan; eye witness to the attempted docking of the vessel;

—Raymond Jackson; another eye witness to the attempted docking;

—Sidney Gernander; marine surveyor who surveyed the wreck;

—Fraser shipyard employees;

—Various other Reserve employees.

h) The vessel's captain resides in New Hampshire; the vessel's chief mate resides in Pennsylvania; both will be required to travel whether the case is venued in Ohio or Minnesota;

i) The real parties-plaintiff in interest are the various insurers, not the two Ohio-based Cleveland-Cliffs companies; except for only one, the other eight insurers are located throughout the country and overseas; to them, Ohio venue and Minnesota venue are indistinguishable.

(After the District Court issued its order but before denial of a writ of mandamus by the Court of Appeals, Reserve retained the services of three more experts, all of whom live in the Duluth, Minnesota area.)

Petitioners' Statement of the Case, for its second significant error, misstates the District Court's rationale for trans-

ferring venue. At page 4 of their brief petitioners allege that the "District Court nevertheless granted Reserve's motion for a transfer of venue to Duluth, Minnesota, *only* because the wreck of the vessel was located there *and for no other reason*. . ." [emphasis added] This is a false characterization of the transfer order.

The order is reproduced in petitioners' appendix B. The Honorable Alvin I. Krenzler cited the governing statute and cited several relevant cases. Most importantly, the District Court expressly mentioned the following criteria as those which it should consider:

a) The convenience of parties and witnesses;

b) The interests of justice;

c) Prevention of wasted time, energy, and money;

d) Protection of litigants against unnecessary inconvenience and expense;

e) The private interests of the litigants;

f) Relative ease of access to sources of proof;

g) Availability of compulsory process for the attendance of unwilling witnesses;

h) The possibility of viewing the premises;

i) The relative advantages and obstacles to a fair trial;

j) All other practical problems that make the trial of a case easy, expeditious, and inexpensive;

k) Enforceability of any judgment obtained.

It is true that the District Court at one point referred to the wreck's location. However, the District Court obviously did not mean to imply that it ignored the other ten criteria it had mentioned. Petitioners do fail to mention the other criteria by citing only the last paragraph of the District Court's order. Nor can petitioners convincingly assert that the Sixth Circuit Court of Appeals adopted "a rule that the forum should be determined in admiralty cases *in personam* by the location of the vessel. . ." Petitioners' Brief p. 5. That issue was not before the Court of Appeals. Instead, only the District Court's alleged abuse of discretion was at issue. The Court of Appeals held only that the discretion had not been abused. Petitioners' Appendix A.

REASONS FOR DENYING THE WRIT

This proceeding is governed by Sup.Ct.R. 17.1 which states:

> A review on writ of certiorari is *not a matter of right*, but of judicial discretion, and will be granted only when there are *special and important reasons therefor*. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.
>
> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

> (b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.
>
> (c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court. [emphasis added]

Sup.Ct.R. 21.1(j) requires petitioners' petition to contain "a direct and concise argument amplifying the reasons relied on for the allowance of the writ. See rule 17." The question presented, therefore, is whether petitioners have shown special and important reasons justifying review on writ of certiorari. The answer clearly is no.

In *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955), the Court explained the "special and important reasons" criterion:

> "Special and important reasons" imply a reach to a problem beyond the academic or the episodic. . .
>
> . . . .
>
> ". . . [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals." [quoting *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387 (1923)]

At no time do petitioners even mention, much less argue, the "special and important reasons" rule. Petitioners

never contend that there is a conflict among the Circuit Courts. Petitioners make no argument that the Sixth Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court's power of supervision. Nor is there any claim that the Circuit Court has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Petitioners have absolutely ignored the requirements of Sup.Ct.R. 17.1 and have absolutely failed to show any special and important reasons justifying a writ of certiorari. All petitioners have done is express their unhappiness with having to try the case in Minnesota. This unhappiness hardly rises to the level of "cases involving principles the settlement of which is of importance to the public." *Rice v. Sioux City Memorial Park Cemetery, Inc., supra.*

In *Norwood v. Kirkpatrick,* 349 U.S. 29 (1955), this Court characterized a District Court's venue transfer power as "broad." The same opinion points out that the venue transfer statute intends to permit District Courts to grant transfers upon a lesser showing than that required under the doctrine of *forum non conveniens.* The discretion to be exercised under the statute is "broader" than the discretion exercised under the older doctrine. Therefore, the Court of Appeals correctly held that the District Court did not abuse its broad discretion. Now the Supreme Court must decide if the Court of Appeals' action is of such significant national importance so as to justify yet another review even though petitioners have already had two District Court pro-

ceedings and a Court of Appeals' proceeding on the venue issue. The Supreme Court should decline to grant what would be the fourth hearing on a matter which concerns only petitioners and is of little importance to the public.

Reserve respectfully states that the merits of the venue transfer are not for this Court to decide just as they were not for the Court of Appeals to decide. This Court must decide only whether Sup.Ct.R. 17.1 has been satisfied, and the Court of Appeals decided only that the District Court had not abused its broad discretion. In this writ proceeding it is irrelevant whether this Court or some other court would have denied the transfer motion. Nor is it relevant whether this Court or some other court believes the District Court made a mistake. Nor should there be a balancing of factual connections with Ohio against factual connections with Minnesota.

Even though the merits of the District Court's transfer decision are not before the Supreme Court, it is interesting to note that there is precedent for the action of the District Court. In *U.S. Coast Guard Vessel CG-95321*, 221 F. Supp. 163 (D.N.H. 1963), a limitation of liability proceeding, the claimant moved the District Court to transfer the proceeding to the District Court for Massachusetts. The case arose out of the grounding and sinking of a vessel in the tow of the subject Coast Guard vessel. Utilizing former Admiralty Rule 54, the New Hampshire District Court granted the transfer motion. The opinion states:

> I do not think that the convenience of the parties would be served by retaining this proceeding here. The home port of the Coast Guard Vessel CG-95321 is New Castle, New Hampshire, and presumably some of their records are there and the crew is stationed

> there. But New Castle is no more convenient to Concord than it is to Boston. Additionally, it appears that certain records are maintained at the First District Coast Guard Headquarters in Boston and that while the vessel was assigned to duty along the entire New England Coast, most of its service was in and around Massachusetts. In fact, it left from Woods Hole, Massachusetts, on the morning of December 18, 1961, to render assistance to the Barbara and Gail. It also appears that the CG-95321 spends time in ports in Massachusetts and presumably any equipment inspection, repairs or general maintenance just prior to leaving Woods Hole was accomplished in Massachusetts. All the claimants are residents of the New Bedford, Massachusetts area; *the accident occurred in waters off Massachusetts;* all the records of the Sandra & Dennis Fishing Corporation are in Massachusetts, as well, presumably, as many of the above-mentioned Coast Guard records, and *the Coast Guard investigation took place in Boston.* [emphasis added]

Similarly here, investigations by both the National Transportation Safety Board and the United States Coast Guard were conducted in Duluth.

In *Sioux City and Barge Line, Inc. v. Upper Mississippi Towing Corp.*, 221 F.Supp. 727 (S.D.Tex. 1963), the libelant originally filed an action *in personam* for damages arising out of a collision occurring on the Mississippi River near Baton Rouge, Louisiana. Respondent moved the Court for an order transferring the case under 28 U.S.C. §1404 (a) to the Eastern District of Louisiana. The Texas District Court stated:

> . . . [T]here are sufficient factors to command a transfer. *The collision which is the basis for this suit occurred in Louisiana. It was investigated in Louisiana,*

> therefore, the various surveyors who examined the vessel are located there. Although all of the crew members of the respective vessels involved in the collision are not permanently stationed within the Eastern District of Louisiana, at least one does reside there; whereas, none reside in the Southern District of Texas. One of the vessels does operate regularly in the Eastern District of Louisiana but is infrequently, if ever, present in the Southern District of Texas. It therefore appears that the Eastern District of Louisiana would be a more convenient forum for the witnesses and the parties than would the Southern District of Texas. However, the determinative factor in ordering the transfer of this cause to the Eastern District of Louisiana is that the interests of justice demand it. The only known witnesses to the collision who were not members of the crew of one of the vessels involved are persons who were at the time of the collision members of the crew of a third vessel, the Tug John E. Coon. *These witnesses were not and apparently are not in the employ of any of the parties to this action.* It appears they now reside in the Baton Rouge, Louisiana area and, consequently, are outside the subpoena power of this Court. They would be within the subpoena power of the District Court for the Eastern District of Louisiana. It would appear that these witnesses would be independent and unbiased and, therefore, probably present the most credible testimony as to the cause of the collision. Accordingly, I find that it would be in the interest of justice to have them subject to the subpoena power of the trial court and therefore available in person to testify, if desired by any parties thereto. [emphasis added]

The italicized clauses contain facts similar to those in the present case. The stranding of the vessel occurred on the

shores of Lake Superior in the District of Minnesota. The stranding was investigated in the District of Minnesota. Two independent witnesses not employed by the parties to this action, Mr. Bruce Jordan and Mr. Raymond Jackson, both reside in Silver Bay, Minnesota and are not within the subpoena power of the District Court for the Northern District of Ohio.

The factors cited in these two cases; the convenience to Reserve's many witnesses and the minor inconvenience to petitioners' witnesses; the location of the wreck; and the other factors cited and relied upon by the District Court; all show that the District Court for the Northern District of Ohio clearly did not err in exercising its broad discretion.

At page 13 of their brief, petitioners acknowledge the applicability of the clearly erroneous standard to the Court of Appeals' review. That appellate court correctly held that the District Court did not clearly err in transferring venue. However, Sup.Ct.R. 17.1, not the clearly erroneous standard, governs the present proceeding. As mentioned above, petitioners failed both to cite and address this rule.

Finally, the Supreme Court should be aware that while the venue issue worked its way through the Ohio District Court and the Court of Appeals for the Sixth Circuit, discovery in the underlying action proceeded under the direction of the United States Magistrate for the District of Minnesota, Fifth Division. At the close of discovery, and pursuant to a pre-trial order of the Minnesota Magistrate, the parties filed with the Minnesota District Court detailed exhibit lists, detailed witness lists, a lengthy stipulation of uncontroverted facts, and lengthy trial briefs. Then, on January 6, 1984, the Minnesota Magistrate certified to the Minnesota District Court that the case was ready for

trial. Since that time the parties have been awaiting a trial date from the Minnesota District Court. The Minnesota District Court is very familiar with this file since discovery proceeded under its auspices and since the case has been ready for trial for many months. All of the work done by the Magistrate in Minnesota and any work that may have already been done by the Minnesota District Court judge in reviewing this file in preparation for trial will be duplicated or wasted if the case is transferred back to the Ohio District Court. The efficient administration of justice would be ill-served.

CONCLUSION

Petitioners have failed to show special and important reasons justifying review on writ of certiorari. The petition for a writ of certiorari to the Sixth Circuit Court of Appeals should be denied.

Respectfully submitted,

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